

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Regional Administrators
FEMA Regions I-X
FCOs and TRO Directors

ATTENTION: Mitigation Division Directors

FROM: David I. Maurstad
Assistant Administrator
Mitigation Directorate

DATE: 20-FEB-08

SUBJECT: Obligation of Grants for Local and Indian Tribal
Governments with Expired Hazard Mitigation Plans

This memorandum provides direction for implementing Federal Emergency Management Agency (FEMA) regulatory requirements for local and Indian tribal governments to have FEMA-approved Local Mitigation Plans (LMP) or Tribal Mitigation Plans (TMP) in order to receive a certain types of assistance as subgrantees. It describes the implications of not having an approved LMP or TMP and explains procedures for FEMA administration of funds in such cases. In addition, it directs Regions to notify States of expiring LMPs and TMPs in order to help facilitate plan updates.

Expired Local or Tribal Mitigation Plans and Grant Obligations

FEMA regulations for local governments at 44 C.F.R. §201.3(d)(1) and (2) and §201.6(a) and Indian tribal governments at §201.3(e)(1) and (2) and §201.7(a) require that LMPs and TMPs be updated and resubmitted to FEMA for approval every five (5) years. In accordance with hazard mitigation assistance program regulations and guidance, local governments and Indian tribal governments ***acting as subgrantees***, must have a FEMA-approved LMP or TMP, respectively, in order to apply for and/or receive project grants under the following hazard mitigation assistance programs:

- Hazard Mitigation Grant Program (HMGP)
- Pre-Disaster Mitigation (PDM)
- Flood Mitigation Assistance (FMA)
- Severe Repetitive Loss (SRL)

The Administrator, at his discretion, may require LMPs or TMPs under the Repetitive Flood Claims (RFC) program, at which time, this policy will apply to those governments that apply for and/or receive assistance under the RFC program.

On November 14, 2007, the Mitigation and Disaster Assistance Directorates issued a joint memo, *Obligation of Grants to States, Territories and Indian Tribal Governments with Expired Hazard Mitigation Plans* that describe the implications of not having a FEMA-approved State Mitigation Plan (SMP) and procedures for administering mitigation grants when a SMP lapsed (i.e., expired). Unfortunately, several SMPs expired before the required 3-year Plan updates met FEMA approval. Likewise, FEMA anticipates that many LMPs and TMPs may lapse before the required 5-year plan updates can be approved by FEMA.

FEMA will not make any obligations of funds for the affected program grants for projects located in local or Indian tribal jurisdictions while the respective LMP or TMP is lapsed. The period a LMP or TMP has lapsed is identified as beginning on the first day after the mitigation plan expires and ending on the last date before the updated plan is approved. That is, if a plan expires and no longer has an approved plan (i.e., their plan has lapsed). Because a LMP or TMP must be updated and resubmitted to FEMA for review and approval every five (5) years, these procedures will be implemented at any time in the future that a LMP or TMP lapses.

The fact that the local government or Indian tribal government had a FEMA-approved LMP or TMP when a declaration occurred, or when a PDM, FMA or SRL grant application was submitted, is not sufficient to receive funds after the plan has expired. The requirement is that a local government or Indian tribal government must also have a FEMA-approved LMP or TMP at the time it **receives** the grant.

This is not a permanent stop to obligations and loss of funding, but it is a temporary hold on obligations until the updated mitigation plan is approved. Project grants obligated under any of these programs prior to the expiration of a FEMA-approved mitigation plan are not affected by this policy, and will continue to be administered under the terms of the grant award.

A subgrantee may be eligible to apply for and/or receive project subgrants if the Regional Administrator grants extraordinary circumstance under 201.6(a)(3) and in accordance with FEMA policy memorandum, *Guidance for FEMA Regional Directors Regarding "Extraordinary Circumstances" under which an HMGP Project Grant may be awarded to Local Jurisdictions without an Approved Local Mitigation Plan*, dated October 28, 2005. If no extraordinary circumstance is granted, the subgrantee must have an approved LMP mitigation plan in order to apply for and/or receive assistance.

Advance Notification Procedures

Effective with the date of this memorandum, Regional Administrators are required to **send a letter once every six months** to the appropriate State, territory or Indian tribal emergency management director or other agency official with notification of those jurisdictions with lapsed plans and plans that will expire within the following 12 month

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period. Sample language for two separate letters is attached to this memorandum. The first sample language must be included in letters to the State from the Region, and the second sample language should be provided to the State for use in writing to their local or Indian tribal governments.

Please ensure that all Regional staff involved in obligating grant funds under the above programs are fully aware of these requirements, and ensure notice of this requirement, is communicated to each of your States, Territories and Indian tribal governments. If you have any questions regarding this memorandum, please contact us, or have a member of your staff contact the following staff at Headquarters for specific areas of responsibility:

Mitigation Plans: Kathleen Smith at (202) 646-4372

Mitigation Grants Policy: Jeff Herd at (202) 646-3217

Mitigation Grants Implementation: Tony Hake at (202) 646-3428

Attachment (2)

Attachment 1:
Sample Language for Letter
to State Emergency Management Director from FEMA Region
Regarding Expiring Local and Tribal Mitigation Plans

(Regions should adapt or customize underlined text as appropriate)

I am writing to inform you of important information regarding Local (including Multi-jurisdictional) Hazard Mitigation Plans (LMPs) [and Tribal Hazard Mitigation Plans (TMPs)] in the [State name] that will expire within the next 12 months.

FEMA regulations for local governments at 44 C.F.R. §201.3(d)(1) and (2) and §201.6(a) [and Indian tribal governments at §201.3(e)(1) and (2) and §201.7(a)] require that LMPs [and TMPs] be updated and resubmitted to FEMA for approval every five (5) years.

As you are aware, local governments [and Indian tribal governments] acting as subgrantees, must have a FEMA-approved LMP [or TMP] in order to apply for and/or receive project grants under the following hazard mitigation assistance programs:

- Hazard Mitigation Grant Program (HMGP)
- Pre-Disaster Mitigation (PDM)
- Flood Mitigation Assistance (FMA)
- Severe Repetitive Loss (SRL)

Although currently not required, FEMA may require LMPs [or TMPs] under the Repetitive Flood Claims (RFC) program in the future, at which time, this policy will apply to those governments that apply for and/or receive assistance under the RFC program as well.

Project grants obligated under any of these programs prior to the expiration of a FEMA-approved mitigation plan are not affected by this policy, and will continue to be administered under the terms of the grant award.

To maintain eligibility for these grants, regulations require that a local [or Indian tribal] government acting as subgrantee must have an approved LMP [or TMP] at the time it **receives** the grants. Therefore, if any LMPs [or TMPs] lapse (i.e., expires before the new or updated plan is approved by FEMA), those jurisdictions will not be eligible for, and FEMA will not award, grant funds for projects under any of the above programs during the lapse. The fact that the local [or Indian tribal] government had a FEMA-approved LMP or TMP when a declaration occurred, or when a PDM, FMA or SRL grant application was submitted, is not sufficient to receive funds after the plan has expired. The requirement is that a local government or Indian tribal government must also have a FEMA-approved LMP [or TMP] at the time it **receives** the grant.

Attachment 1

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This is not a permanent stop to and loss of funding, but it is a temporary hold on awards and funding until the updated plan is approved, as long as the plan is approved within the program application and obligation periods specified in grant program regulations and guidance.

A subgrantee may be eligible to apply for and/or receive project subgrants concurrent with the development of a mitigation plan if the Regional Administrator grants an extraordinary circumstance under 201.6(a)(3) and associated guidance. If no extraordinary circumstance is granted, the subgrantee must have an approved mitigation plan in order to apply for and/or receive assistance.

Attached is a comprehensive list of LMPs [and TMPs] that have either lapsed or will expire within the next 12 months. This FEMA Regional office will continue to provide all the technical assistance we can to your staff. In addition, we encourage the State to prioritize and apply for mitigation planning grants under HMGP, PDM and FMA (flood only) as they become available for local [and Indian tribal] governments to develop new or update mitigation plans.

Please contact me at [phone number] or have a member of your staff contact [name/title] at [phone number] if we can provide further information.

Sincerely,

[Name]

Regional Administrator

Attachment

cc: David I. Maurstad, Assistant Administrator, Mitigation Directorate, FEMA

Attachment 2:
**Sample Language for Letter to Local and Indian Tribal Government from State
Regarding Expiring Local and Tribal Mitigation Plans**

(States should adapt or customize underlined text as appropriate)

I am writing to inform you of important information regarding [name of jurisdiction or other entity]'s [Local / Multi-jurisdictional / Tribal] Hazard Mitigation Plan that will expire on [date].

[FOR LOCAL:] FEMA regulations for local governments at 44 C.F.R. §201.3(d)(1) and (2) and §201.6(a) require that Local Mitigation Plans (LMPs) be updated and resubmitted to FEMA for approval every five (5) years.

[FOR TRIBAL:] Effective October 1, 2008, all new or updated hazard mitigation plans approved by FEMA for Indian tribal governments acting as subgrantees are required to meet the criteria identified in §201.7, *Tribal Mitigation Plans* (TMPs). FEMA regulations for Indian tribal governments at §201.3(e)(1) and (2) and §201.7(a) require TMPs be updated and resubmitted to FEMA for approval every five (5) years.

Please be aware that local [Indian tribal] governments acting as subgrantees, must have a FEMA-approved mitigation plan in order to **apply for and/or receive** project grants under FEMA's hazard mitigation assistance programs, including the Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM), Flood Mitigation Assistance (FMA), and Severe Repetitive Loss (SRL) programs. Although currently not required, FEMA may require mitigation plans under the Repetitive Flood Claims (RFC) program in the future, at which time, this policy will apply to those governments that apply for and/or receive assistance under the RFC program as well. Project grants obligated under any of these programs prior to the expiration of a FEMA-approved mitigation plan will continue to be administered under the terms of the grant award.

To maintain eligibility for these grants, Federal regulations require that a local [Indian tribal] government acting as subgrantee must have an approved LMP [TMP] at the time it **applies for and/or receives** the grants. The fact that a local [Indian tribal] government had a FEMA-approved mitigation plan when a declaration occurred, or when a PDM, FMA or SRL grant application was submitted, is not sufficient to receive grant awards after the plan has expired. Therefore, if any LMP [TMP] lapses (i.e., expires before the new or updated mitigation plan is approved by FEMA), those jurisdictions will not be eligible for, and FEMA will not award, grant funds for projects under any of the above programs during the lapse.

This is not a permanent stop to and loss of funding, but it is a temporary hold on awards and funding until the updated mitigation plan is approved, as long as the plan is approved within the program application and obligation periods specified in grant program regulations and guidance.

Attachment 2

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We will provide all the technical assistance we can to the [name of jurisdiction or other entity] to ensure that your mitigation plan is updated in time to avoid any lapse. In addition, FEMA offers mitigation planning grants under three of the mitigation grant programs, the HMGP, PDM and FMA, to assist local communities and Tribal governments to develop new or update mitigation plans. FEMA awards mitigation grant funds to the State [Commonwealth], which then disburses those funds to its communities. We encourage [name of jurisdiction or other entity] to apply for assistance as funds become available. It is recommended that the local [Indian tribal] government apply for FEMA assistance at least one year prior to the expiration of their plan to ensure an adequate period to award the grant, update your plan, and for FEMA to complete its review and approval of your plan update. To obtain additional information on these programs, please contact [State Hazard Mitigation Officer or other official] at [phone number].

Please contact me at [phone number] or have a member of your staff contact [name/title] at [phone number] if we can provide further information.

Sincerely,

[Name]

[State Emergency Management Director or other Agency Official]